

AG Contract No.: KR04-1312TRN  
ADOT ECS File No.: JPA 04-059  
Project No.: CM-MES-0(022)P  
Project: Install Traffic Control Signal System  
on Stapley Dr.  
Section: University Dr. to McKellips Road  
TRACS No.: SS498 01C  
Budget Source Item No.: N/A  
City Project #: 00-009

## INTERGOVERNMENTAL AGREEMENT

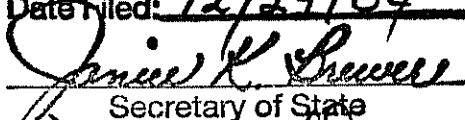
BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF MESA

THIS AGREEMENT is entered into 29th December, 2004, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City")

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the construction of traffic signals, signs, streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. A project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for their approval.
5. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).
6. The State's interest in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

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NO. 27280  
Filed with the Secretary of State  
Date Filed: 12/29/04  
  
Secretary of State

By: 

7. The work encompassed in this Agreement is for the installation of a traffic control signal system on Stapley Dr. from University Dr. to McKellips Road. The estimated cost is as follows:

**TRACS No. SS498 01C**

**\* Total Estimated Cost of the Project** **\$589,175.00**

Federal-Aid funds @ 94.3% of 360,000.00(capped)	\$339,480.00
City Funds @ 5.7% of 360,000.00(capped)	\$ 20,520.00
Estimated City Funds @ 100%	<u>\$229,175.00</u>
<b>Total Estimated City Funds</b>	<b>\$249,695.00</b>

**\*(Includes 15% CE and 5% project contingencies)**

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1. The State will:

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

b. If such project is approved for construction by FHWA and the funds are available for construction, hereby agrees to be authorized agent for the City, and with the aid and consent of the City and the FHWA, proceed to advertise for, receive and open bids, and subject to the concurrence of the City and the FHWA, enter into a contract with a firm on behalf of the City to whom the award is made for the construction of the project. Such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the City and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

c. Enter into a Project Agreement with FHWA on behalf of the City covering the work encompassed in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

d. Not be obligated to maintain said project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City will:

a. If such project is approved for construction by FHWA and the funds are available for construction, hereby designate the State as authorized agent for the City. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Should unforeseen conditions or circumstances increase the cost of said work such that a change in the extent or scope of work called for in this Agreement become necessary, the City shall be obligated to incur and pay for said increased costs.

c. Agree the cost of the analysis and works covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

d. Prior to the solicitation of bids, agree to deposit funds with the State in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of federal aid (capped) received.

e. Provide any required preliminary engineering, design plans, specification, planning studies, the environmental analysis and design of the project and all other documents for State's review. Incorporate or resolve State's review comments into the design.

f. Acquire any necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

g. Remove from the proposed rights-of-way all unauthorized obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway within City's right-of-way, and hereby certifies that all unauthorized obstructions and unauthorized encroachments have been or will be removed therefrom, prior to the start of construction.

h. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

i. Upon completion of construction, be responsible to provide for, at its own costs and as an annual item in its budget, proper and perpetual maintenance to the work described in this Agreement under section 1.7.

j. Upon completion of construction of the project, be responsible to provide at the time of final billing, a letter from the Project Manager or other responsible engineering official, that the work on this project is completed and considered acceptable by the State's assigned Project Manager or other responsible engineering official and that the federal project is ready to be closed.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the construction, construction engineering and administration work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain said project.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue Mail Drop 616E  
Phoenix, AZ 85007  
FAX: (602) 712 7424

City of Mesa  
City Manager  
P. O. Box 1466  
Mesa, AZ 85211-1466

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11. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF MESA**

**STATE OF ARIZONA**

Department of Transportation

By

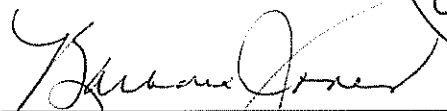
  
MICHAEL HUTCHINSON  
City Manager

By

  
SUSAN TELLEZ  
Contract Administrator

**ATTEST**

By

  
BARBARA JONES  
City Clerk



RESOLUTION NO. 8371

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR THE INSTALLATION OF TRAFFIC SIGNAL CONDUIT AND FIBER OPTIC COMMUNICATION SYSTEM ON STAPLEY DR FROM UNIVERSITY TO MCKELLIPS RD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:


Section 1: That the cost sharing agreement between the State of Arizona Department of Transportation and the City of Mesa for the installation of Traffic Signal Conduit and Fiber Optic Communication System on Stapley Dr from University Dr to McKellips Rd (ADOT JPA No. 04-059); is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

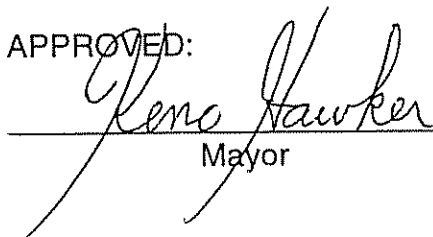
PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 6th day of December, 2004.



ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED:

  
\_\_\_\_\_  
Mayor

APPROVAL OF THE CITY OF MESA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 7<sup>th</sup> day of December, 2004.

A handwritten signature in cursive script, appearing to read "Debbie Spurr", written over a horizontal line.

City Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-1312TRN (**JPA 04-059**), an Agreement between public agencies, i. e., The State of Arizona and The City of Mesa, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: December 22, 2004

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section